

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ALF RENTAL COMPANY, INC.,

Plaintiff,

Docket No.: 07 CV 3148 (KMK)

-against-

**THIRD-PARTY COMPLAINT**

BUILDERS RESOURCE, INC., D'ONOFRIO GENERAL  
CONTRACTORS CORP., CONSOLIDATED EDISON  
OF NEW YORK, INC., TERRA DINAMICA, LLC,  
CORESLAB STRUCTURES, and NICOLSON  
CONSTRUCTION CO.,

Defendants.

-----X  
BUILDERS RESOURCE, INC.,

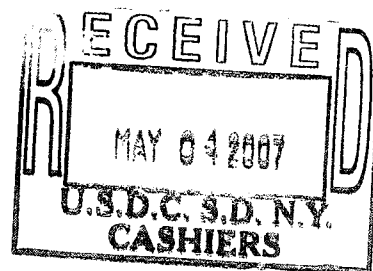
Third-Party Plaintiff,

-against-

BAY CRANE SERVICE INC.,

Third-Party Defendant.

-----X



DEFENDANT AND THIRD-PARTY PLAINTIFF Builders Resource, Inc., as and for its  
third-party complaint, by its attorneys Lambert & Weiss, alleges upon information and belief as  
follows:

1. Defendant and third-party plaintiff Builders Resource, Inc. is a Massachusetts corporation with offices at 180 Main Street, Blackstone, Massachusetts.
2. Upon information and belief, third-party plaintiff Bay Crane Service Inc. is a New York corporation with offices located at 11-02 43<sup>rd</sup> Avenue, Long Island City, New York 11101.
3. Starting in or about May, 2006, third-party plaintiff entered into certain rental agreements with third-party defendant whereby third-party defendant provided certain cranes to

the defendant and third-party plaintiff, along with timber crane mats, at a certain construction site located in Bronx County, City and State of New York.

4. In or about March, 2007, plaintiff ALF Rental Company, Inc. commenced an action against defendant and third-party plaintiff Builders Resource, Inc. and other defendants in the Supreme Court, Bronx County, alleging that defendant and third-party plaintiff owed the plaintiff a certain sum for the rental of hardwood crane mats. A copy of ALF's complaint is annexed hereto as Exhibit "A".

5. Thereafter, on or about April 19, 2007, defendant and third-party plaintiff filed a notice of removal in the U.S. District Court, Southern District of New York to remove the ALF action from the Supreme Court, Bronx County to the U.S. District Court, Southern District of New York.

6. Thereafter, defendant and third-party plaintiff interposed an answer to the complaint, a copy of which is annexed hereto as Exhibit "B".

7. In its answer, the defendant and third-party plaintiff alleged that it had no privity of contract with the plaintiff ALF Rental Company, Inc., and that the third-party plaintiff did not owe any money to the plaintiff for the timber crane mats.

8. The obligation, if any, to pay the plaintiff for the timber crane mats is the obligation of the third-party defendant and not of the third-party plaintiff.

9. In the event that the plaintiff ALF recovers a judgment against the third-party plaintiff in this action by reason of the allegations set forth in its complaint, such responsibility on the part of the third-party defendant by operation of law or otherwise, would have been caused and brought about by the failure of the third-party defendant to pay the plaintiff for the timber crane mats.

10. Accordingly, the third-party defendant would be liable to the third-party plaintiff, Builders Resource, Inc. for any amounts recoverable upon the claims made against the third-party plaintiff in this action.

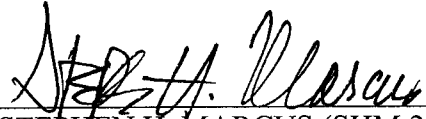
**WHEREFORE**, in the event that plaintiff recovers judgment against defendant Builders Resource, Inc., said defendant and third-party plaintiff demands judgment over and against third-party defendant Bay Crane Services Inc. for full indemnification, or, in the alternative, for contribution, awarding defendant and third-party plaintiff Builders Resource, Inc. such other, and further relief as may be just and proper, and awarding defendant and third-party plaintiff Builders Resource, Inc., fees, costs and disbursements.

Dated: New York, New York  
May 4, 2007

Yours, etc.

LAMBERT & WEISS  
*Attorneys for Defendant and  
Third-Party Plaintiff Builders Resource, Inc.*

By:

  
STEPHEN H. MARCUS (SHM 2370)  
61 Broadway, Suite 2020  
New York, New York 10006  
(212) 344-3100

# **EXHIBIT “A”**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

Index No. 8910/07  
Date Purchased: 3/15/07

ALF RENTAL COMPANY, INC. ,

**SUMMONS**

Plaintiff,

Plaintiff designates  
Bronx County as  
the place of trial.

- against -

BUILDERS RESOURCE, INC., D'ONOFRIO The basis of venue is  
GENERAL CONTRACTORS CORP., CONSOLIDATED the location of the  
EDISON OF NEW YORK, INC., TERRA DINAMICA, subject property  
LLC, CORESLAB STRUCTURES and NICOLSON  
CONSTRUCTION CO.,

Defendant.

-----x  
To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

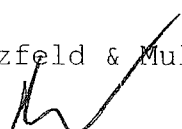
**NOTICE OF NATURE OF ACTION AND RELIEF SOUGHT**

THE OBJECT of the above captioned action is to foreclose mechanics liens totaling \$77,149 recorded in the office of the Clerk of the County of the Bronx, covering the premises known as Mott Haven Substation, located at 415 Bruckner Blvd., Bronx, NY, Bronx County, City and State of New York, Block 2599, Lot 5, and a judgment for moneys due and owing.

The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the mechanics lien and a judgment for moneys due and owing.

Dated: New York, New York  
March 14, 2007

Bahn, Herzfeld & Multer, LLP,

  
By: RICHARD L. HERZFELD  
Attorneys for Plaintiffs  
555 Fifth Avenue  
New York, N.Y. 10017  
(212) 818-9019

To: BUILDERS RESOURCE, INC.  
101 Nasonville Road  
Nasonville RI 02830

D'ONOFRIO GENERAL CONTRACTORS CORP.  
202 28<sup>th</sup> Street  
Brooklyn, NY 11232

CONSOLIDATED EDISON OF NEW YORK, INC.  
4 Irving Place  
NY NY 10003

TERRA DINAMICA, LLC  
5 Meadowbrook Road  
Granby Ct. 06035

CORESLAB STRUCTURES  
1023 Waterbury Rd.  
Thomaston, Ct.

NICOLSON CONSTRUCTION CO.  
12 McClane Street  
Cuddy, Pa. 15031

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----x	
ALF RENTAL COMPANY, INC.	:
	: VERIFIED
Plaintiff,	: COMPLAINT
	:
-against-	: Index No.
	:
BUILDERS RESOURCE, INC., D'ONOFRIO GENERAL	:
CONTRACTORS CORP., CONSOLIDATED EDISON OF	:
NEW YORK, INC., TERRA DINAMICA, LLC, CORESLAB	:
STRUCTURES and NICOLSON CONSTRUCTION CO.,	:
Defendants	:
-----x	

Plaintiff, ALF RENTAL COMPANY, INC., by its attorneys, BAHN, HERZFELD & MULTER, LLP, for its complaint, alleges as follows:

1. Plaintiff, ALF RENTAL COMPANY, INC. ("ALF"), is and at all times hereinafter mentioned was, a corporation organized and existing pursuant to the laws of the State of New Jersey.

2. Upon information and belief, defendant Builders Resource, Inc. ("Builders") is, and at all times hereinafter mentioned was, a corporation organized and exiting under the laws of the State of Rhode Island, doing business within the State of New York.

3. Upon information and belief, defendant D'Onofrio General Contractors Corp. ("D'Onofrio"), is, and at all times hereinafter mentioned was, a corporation, organized under and existing pursuant to the laws of the State of New York.

4. Upon information and belief, defendant Consolidated Edison of New York, Inc. ("Con Ed") is, and at all times hereinafter mentioned was, is the fee owner of premises known as Mott Haven Substation, located at 415 Bruckner Blvd., Bronx, NY, Bronx County, City and State of New York, Block 2599, Lot 5 (Exhibit A) (the

"Property").

5. Upon information and belief, defendants Terra Dinamica, LLC, Coreslab Structures and Nicolson Construction Co. are parties claiming to have some interest in the Property by the filing of a Mechanic's Lien and/or a lis pendens in the Office of the Clerk of the County of the Bronx.

6. Upon information and belief, D'Onofrio was the general contractor on a project for the improvement of the Property on behalf of Con Ed (the "Project").

7. Upon information and belief, Builders was a subcontractor to D'Onofrio on the Project.

#### FIRST CAUSE OF ACTION AGAINST BUILDERS

8. On or about May 1, 2006, plaintiff and Builders entered into an agreement whereby plaintiff agreed to furnish certain hardwood crane mats to Builders for use in connection with the Project.

9. The terms of the agreement were as set forth in the confirmation provided by plaintiff and provided to Builders, annexed as Exhibit B.

10. Plaintiff's compensation was agreed to as set forth in the confirmation.

11. Thereafter, plaintiff delivered the mats which were used in connection with the Project.

12. Rental charges were paid by Builders pursuant to the agreement, but in or about June 1, 2006, Builders failed and refused to pay the monthly charges as they accrued.



13. Unpaid rental charges as of October 1, 2006 totaled \$58,538.

14. Additional rental charges of \$13,746.30 accrued through March 1, 2007 and continue to accrue at approximately \$84 per diem.

15. In addition, in accordance with the parties' agreement, any mats which were not returned were to be paid for at a rate set forth in Exhibit B.

16. 12 mats were not returned and Builders has claimed it cannot locate them. Based upon the parties' agreement, there is due and owing an additional \$17,200.

17. Pursuant to the parties' agreement, there is due and owing from Builders to plaintiff, the sum of \$89,484.41.

#### SECOND CASE OF ACTION AGAINST BUILDERS

18. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 17 of the complaint as if fully set forth herein.

19. Plaintiff invoiced Builders for the periodic rentals in the total amount of \$72,284.41 to date.

20. Builders made no complaint with respect to the amount of the invoices.

21. By reason of the foregoing, there is an account stated and there is due and owing from Builders to plaintiff the sum of \$72,284.41.

#### THIRD CAUSE OF ACTION AGAINST BUILDERS

22. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 21 of the complaint as if fully

set forth herein.

23. The amounts set forth above are a fair and reasonable value for the materials supplied by the Plaintiff.

24. By reason of the foregoing, there is due and owing from Builders to plaintiff the sum of \$89,484.41.

FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

25. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 24 of the complaint as if fully set forth herein.

26. On or about October 5, 2006 and March 5, 2007, each within eight (8) months after the last items of work and materials were furnished to the premises, plaintiff filed Notices of Lien in writing in the Office of the Clerk of the County of Bronx against the Property in the respective amounts of \$58,538.11 and \$18,611, for an aggregate of \$77,149.11 (Exhibit C).

27. Said Notices contained all of the information required by the appropriate sections of the N.Y. Lien Law.

28. Said Liens have not been paid, cancelled or discharged of record, and no other proceeding has heretofore been brought in law or in equity to recover the amount claimed therein.

WHEREFORE, Plaintiff demands judgment as follows:

(1) On the first and third causes of action against BUILDERS, for the sum of \$89,484.41, with interest thereon from the June 1, 2006;

(2) On the second cause of action against BUILDERS, for the sum of \$72,284.41, with interest thereon from the June 1, 2006;

(3) On the fourth cause of action against Defendants, adjudging and determining that the Notices of Lien filed by Plaintiff are good, valid and subsisting liens in the total amount of \$77,149.11 against the interest of the Defendants in the real property above described;

(4) That the Defendants and all persons claiming under them or either of them or any of them subsequent to the filing of the Notice of Pendency in this action in the office of the Clerk of the County of the Bronx in which said real property is situate, and every person whose conveyance or encumbrance is subsequent or subsequently recorded, filed, or docketed, be forever barred and foreclosed of all right, claim, lien, and equity of redemption in said real property or any part thereof;

(5) That the interest of the Defendants as of the date of filing of said Notices of Lien may be decreed to be sold according to law:

(6) That the moneys arising from said sale may be brought into court;

(7) That Plaintiff may be paid therefrom the amount adjudged to be due to the Plaintiff, with interest thereon to the time of such payment, together with the costs and expenses of this action and the expenses of such sale, so far as the amount of such money properly applicable thereto will pay the same;

(8) That Builders may be adjudged to pay any deficiency which may remain after applying all of such moneys so applicable thereto;

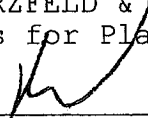
(9) That, in case it be determined and adjudged that Plaintiff

does not have a valid and subsisting lien upon said real property, the Plaintiff may have a personal judgment against Builders for the sum of \$89,484.41 with interest thereon from the June 1, 2006; and

(10) That Plaintiff have such other and further relief, or both, as shall be equitable, just and proper.

Dated: New York, New York  
March 14, 2007

BAHN, HERZFELD & MULTER, LLP  
Attorneys for Plaintiff

  
By: RICHARD L. HERZFELD  
555 Fifth Avenue  
New York, N.Y. 10017  
(212) 818-9019

VERIFICATION

STATE OF NEW YORK:

s.s.:

COUNTY OF NEW YORK:

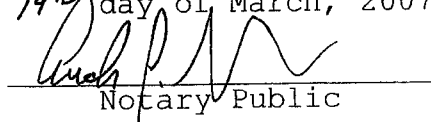
RICHARD L. HERZFELD, being duly sworn, deposes and says:

I am the attorney for plaintiff in this action and the foregoing complaint is true to my own knowledge, except as to matters therein stated on information and belief and as to those matters I believe to be true; the grounds of my belief as to all matters not stated upon my knowledge are correspondence and other writings furnished to me by plaintiff and interviews with officers and employees of plaintiff; and the reason why the verification is not made by plaintiff is that the plaintiff is not in the county where I maintain my office.



RICHARD L. HERZFELD

Sworn to before me this  
14<sup>th</sup> day of March, 2007

  
Notary Public

ANDREW JAY MULTER  
Notary Public, State of New York  
No. 02MU5066724  
Qualified in New York County  
Commission Expires 09/30/2010

EXHIBIT A

**HARVEY-GEARY ASSOCIATES, INC.**

**387 Sixth Avenue**

**Brooklyn, New York 11215**

**(718)768-3500**

**Fax: (718)768-2550**

**SCHEDULE "A"**

**ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of The Bronx, City and State of New York, bounded and described as follows:**

**BEGINNING at the corner formed by the intersection of the northwesterly side of Bruckner Boulevard with the southerly side of East 144<sup>th</sup> Street;**

**RUNNING THENCE westerly along the southerly side of East 144<sup>th</sup> Street, 360.45 feet to a point;**

**RUNNING THENCE southerly along a line forming an angle of 90 degrees 17 minutes 00 seconds on the southwest with the southerly side of East 144<sup>th</sup> Street, part of the distance through a party wall, 37.56 feet to a point;**

**RUNNING THENCE easterly at right angles to the last mentioned course, part of the distance through a party wall, 14.67 feet to a point;**

**RUNNING THENCE southerly at right angles to the last mentioned course, part of a distance through a party wall, 220.07 feet to a point;**

**RUNNING THENCE westerly at right angles to the last mentioned course, part of a distance through a party wall, 30.00 feet to a point;**

**RUNNING THENCE southerly at right angles to the last mentioned course, part of a distance through a party wall, 1.16 feet to a point;**

**RUNNING THENCE westerly at right angles to the last mentioned course, 259.55 feet to the easterly side of Southern Boulevard;**

**RUNNING THENCE southerly along the easterly side of Southern Boulevard, 378.19 feet to the land now or formerly of New York and Harlem Rail Road;**

**RUNNING THENCE southeasterly along the land now or formerly of New York and Harlem Rail Road along a line forming an angle of 122 degrees 41 minutes 38 seconds on the northeast with the easterly side of Southern Boulevard, 138.78 feet to the northwesterly side of Bruckner Boulevard;**

**HARVEY-GEARY ASSOCIATES, INC.**  
**387 Sixth Avenue**  
**Brooklyn, New York 11215**

**(718)768-3500**

**Fax: (718)768-2550**

**SCHEDULE "A" (continued)**

**RUNNING THENCE** northeasterly along the northwesterly side of Bruckner Boulevard, along a curve bearing to the left having a radius of 1000 feet an arc length of 362.88 feet to a point of tangency;

**RUNNING THENCE** northeasterly along the northwesterly side of Bruckner Boulevard, 521.94 feet to the corner the point or place of BEGINNING.



EXHIBIT B

**ALF RENTAL COMPANY INC.**

122 W. Sheffield Avenue  
Englewood, New Jersey 07631  
(201) 871-9889, Fax (201) 871-9858

**EQUIPMENT  
RENTAL AGREEMENT**

**BUILDERS RESOURCE INC.**  
101 Nasonville Road  
Nasonville, RI 02830

Tel.#401-762-0262  
Fax#401-762-0312

Attention: Steve Allard (Cell#401-623-6135)

WE PROPOSE to rent you the following equipment subject to terms and conditions hereinafter stated:  
**Seventy Eight (78) Hardwood Crane Mats: (50) 24'x4'x1', (20) 26'x4'x1' & (8) 30'x4'x1'.**

If rented equipment is not returned or returned in a damaged condition, you are responsible for the amount of  
**\$1,300.00 per 24' Mat, \$1,450 per 26' Mat & \$1,700 per 30' Mat.**

RENTAL is to be at the rate of **\$6.00 per 24' Mat/Day, \$7.50 per 26' Mat/Day & \$9.00 per 30' Mat/Day** from the date of delivery until equipment is returned to us. Rental rate based on (7) day work week with a minimum of a (7) day rental.

**TERMS: NET 30 DAYS FOB OUR YARD.**

DELIVERY of equipment is to be made to you on: Rental on all Mats began on May 1, 2006 (Mats held for this job), for use at **Mott Haven (Bronx).**

ALL TRANSPORTATION CHARGES from point of delivery to destination and return charges to point of delivery are to be paid by you. Loading Charge of \$150 per trailer and an Unloading Charge of \$150 per trailer in our yard.

YOU ARE TO ASSUME full responsibility for equipment during rental period, and are to return it to us in as good condition as received less wear incident to normal use. An \$80 per Unit cleaning and/or maintenance charge will be incurred if the item is returned to us with debris (dirt, garbage, steel, etc.). If wood dunnage (spacers) are not returned, a charge of \$6.00 per unit will be incurred.

WE ASSUME NO LIABILITY for loss or damage on account of accidents, delays due to defective material or delays in the delivery or removal of equipment.

YOU REPRESENT THAT YOU ARE FULLY RESPONSIBLE with proper methods for installation, use and maintenance of the equipment. You are solely responsible for its installation, use and maintenance and agree to do so in a proper and safe manner.

YOU SHALL INDEMNIFY US AND HOLD US HARMLESS against all losses, claims, suits, damages, expenses and/or penalties, including attorney's fees, arising out of any matter concerning the equipment occurring during the rental period or while the equipment is otherwise in your possession, including but not limited to claims of personal injury or property damage.

YOU SHALL SECURE general liability insurance policy, naming us as a coinsured, to afford protection with limits, for each occurrence, of not less than Two Million Dollars (\$2,000,000.00) with respect to personal injury and death, and Five Hundred Thousand Dollars (\$500,000.00) with respect to property damage.

WE RESERVE THE RIGHT, if rental is in default under the terms of this agreement, or if in our opinion equipment is being damaged in excess of ordinary wear and tear, to take possession of our property at once.

ENTIRE AGREEMENT. This agreement sets forth the entire agreement and understanding between the parties on the subject matter thereof, and merges all prior discussions and negotiations between them. Neither of the parties shall be bound by any conditions, definitions, representatives or warranties with respect to the subject matter of this agreement other than as expressly provided herein or as duly set forth on or subsequent to the date hereof in a writing signed by a duly authorized representative of the party to be bound thereby.

ATTORNEYS FEES. In the event of a breach of this agreement, the injured party shall be entitled to recover reasonable attorneys' fees and costs of collection.

NOTICE: - If shipment of this equipment is ordered by Lessee who neglects to return this contract signed, It shall be considered as in full effect when such shipment is made.

NOTE: Please sign copy of this contract & return to, **ALF RENTAL COMPANY, INC.**

By: 

VICE PRESIDENT

**ACCEPTANCE**

Accepted this, on the 1<sup>st</sup>. day of May, 2006.

Accepted by (Builders Resource Inc.):

Signature

Print Name

Title

EXHIBIT C



187 - Notice of mechanic's lien, affidavit of service, individual, partnership or corporation, New York City to be filed with County Clerk, Lien Law, § 9 of reg. 206

Blumenthal & Associates, Publisher, NYC 10013  
www.blumenthal.com

### NOTICE OF MECHANIC'S LIEN

To the Clerk of the County of Bronx

and all others whom it may concern:

**Please Take Notice, that** ALF Rental Company, Inc.

as lienor(s) have and claim a lien on the real property hereinafter described as follows:

- (1) The names and residences of the lienor(s) are  
ALF Rental Company, Inc.

being a (partnership) ☒ (corporation) composed of 3 shareholders

whose business address is at 122 W. Sheffield Avenue, Englewood, NJ 07631  
and whose principal place of business is at same

- (1a) The name and address of lienor's attorney, if any Bahn Herzfeld & Multer, LLP  
555 Fifth Avenue, NY NY 10017
- (2) The owner of the real property is Consolidated Edison Co. of NY, Inc.  
and the interest of the owner as far as known to the lienor(s) is fee
- (3) The name of the person by whom the lienor(s) was (were) employed is Builders Resource, Inc.  
The name of the person to whom the lienor(s) furnished or is (are) to furnish material or for whom the lienor(s) performed or is (are) to perform professional services is Builders Resource Inc.  
The name of the person with whom the contract was made is Builders Resource  
The labor performed was

The material furnished was timber mats to support cranes

The materials actually manufactured for but not delivered to the real property are

The agreed price and value of the labor performed is \$  
The agreed price and value of the material furnished is \$  
The agreed price and value of the material actually mfd. for but not delivered to the real prop. is \$  
Total agreed price and value \$

- (5) The amount unpaid to the lienor(s) for said labor performed is \$  
The amount unpaid to the lienor(s) for said material furnished is \$ 58,538 to 10/1/06  
The amount unpaid to lienor(s) for material actually mfd. for but not delivered to the real prop. is \$  
Total amount unpaid \$

The total amount claimed for which this lien is filed is \$58,538

- (6) The time when the first item of work was performed was  
The time when the first item of material was furnished was 5/9/06  
The time when the last item of work was performed was  
The time when the last item of material was furnished was open

- (7) The property subject to the lien is situated in the Borough of Bronx  
City of New York, on the side of

County of Bronx

inches of , being feet and feet  
and inches wide, front and rear by feet and inches deep on each side,  
and known as Number 415 Bruckner Blvd., Bronx, NY, Lot 5, Block 2599

That said labor and materials were performed and furnished for and used in the improvement of the real property hereinbefore described. That 8 months (4 months if a single family dwelling) have not elapsed dating from the last item of work performed, or from the last items of materials furnished, or since the completion of the contract, or since the final performance of the work, or since the final furnishing of the materials for which this lien is claimed.

Dated 10/5/06

The name signed must be printed beneath  
Robert L. Gerosa, Jr.

## Verification

STATE OF NEW YORK, COUNTY OF

ss.:

INDIVIDUAL OR PARTNER

being duly sworn, says that deponent is (one of the co-partnership named in the within notice of lien and) the lienor(s) mentioned in the foregoing notice of lien; that deponent has read the said notice and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me on

*Jersey*  
STATE OF NEW YORK, COUNTY OF *Bergen*

ss.:

CORPORATION

Robert L. Gerosa, Jr. being duly sworn, says that deponent is the ~~President~~ *VICE PRESIDENT* of ALF Rental Company, Inc. herein, that deponent has read the foregoing notice of lien and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes it to be true. The reason why this verification is made by deponent is that deponent is an officer, to wit, the ~~President~~ *VICE PRESIDENT* of Alf Rental Co, Inc. which is a New Jersey corporation, and deponent is familiar with the facts and circumstances herein.

The sources of deponent's information and the grounds of deponent's belief as to all matters not therein stated upon deponent's knowledge are as follows:  
personal knowledge and books and records

Sworn to before me on *10-12-06*

*Bonnie P. Jackson*

OFFICIAL SEAL  
BONNIE P. JACKSON  
NOTARY PUBLIC-NEW JERSEY  
My Commission Expires Oct. 28, 2008

Editor's note: Notice of Mechanic's Lien may be filed at any time during progress of the work and the furnishing of the materials, or, within eight months (four months if a single family dwelling) after the completion of the contract, or the final performance of the work, or the final furnishing of the materials. The Notice of Mechanic's Lien must be filed in the Clerk's office of the county where the property is situated. If such property is situated in two or more counties, file the Notice of Mechanic's Lien in the office of the Clerk of each county. See Lien Law §10.

17 10:08a

Richard L. Herzfeld

212-986-5316

p.2



167 - Notice of mechanic's lien, affidavits of service, individual, partnership or corporation, New York City to be filed with County Clerk. Lien Law, § 4 of sec. 9.96

Blumberg Excelsior, Publisher, NYC 10013  
www.blumberg.com

## NOTICE OF MECHANIC'S LIEN

To the Clerk of the County of Bronx

and all others whom it may concern:

Please Take Notice, that ALF Rental Company, Inc.

as lienor(s) have and claim a lien on the real property hereinafter described as follows:

- (1) The names and residences of the lienor(s) are  
ALF Rental Company, Inc.

being a (partnership) (corporation) composed of 3 shareholders

whose business address is at 122 W. Sheffield Avenue, Englewood, NJ 07631  
and whose principal place of business is at same

- (1a) The name and address of lienor's attorney, if any Bahn Herzfeld & Multer, LLP  
555 Fifth Avenue, NY NY 10017
- (2) The owner of the real property is Consolidated Edison Co. of NY, Inc.  
and the interest of the owner as far as known to the lienor(s) is fee
- (3) The name of the person by whom the lienor(s) was (were) employed is Builders Resource, Inc.  
The name of the person to whom the lienor(s) furnished or is (are) to furnish material or for whom the lienor(s) performed or is (are) to perform professional services is Builders Resource Inc.  
The name of the person with whom the contract was made is Builders Resource  
The labor performed was

The material furnished was timber mats to support cranes

The materials actually manufactured for but not delivered to the real property are

The agreed price and value of the labor performed is \$

The agreed price and value of the material furnished is \$

The agreed price and value of the material actually mfd. for but not delivered to the real prop. is \$

Total agreed price and value \$

- (5) The amount unpaid to the lienor(s) for said labor performed is \$
- The amount unpaid to the lienor(s) for said material furnished is \$ 18,611
- The amount unpaid to lienor(s) for material actually mfd. for but not delivered to the real prop. is \$
- Total amount unpaid \$

The total amount claimed for which this lien is filed is \$ 18,611

- (6) The time when the first item of work was performed was
- The time when the first item of material was furnished was 10/1/06
- The time when the last item of work was performed was
- The time when the last item of material was furnished was 10/16/06

- (7) The property subject to the lien is situated in the Borough of Bronx

County of Bronx

City of New York, on the side of feet and  
inches of , being feet  
and inches wide, front and rear by feet and  
and known as Number 415 Bruckner Blvd., Bronx, NY Lot 5, block 2599  
inches deep on each side,

That said labor and materials were performed and furnished for and used in the improvement of the real property hereinbefore described. That 8 months (4 months if a single family dwelling) have not elapsed dating from the last item of work performed, or from the last items of materials furnished, or since the completion of the contract, or since the final performance of the work, or since the final furnishing of the materials for which this lien is claimed.

Dated: 3/11/07

*Robert L. Gerosa*  
The name signed must be printed beneath  
Robert L. Gerosa, Jr.

2007 MAR -5 AM 10:21  
COUNTY CLERK  
BRONX COUNTY  
DOCKET DEPARTMENT

FILED

17 10:09a

Richard L. Herzfeld

212-986-5316

p. 3

## Verification

STATE OF NEW YORK, COUNTY OF

ss.:

INDIVIDUAL OR PARTNER

being duly sworn, says that deponent is (one of the co-partnership named in the within notice of lien and) the lienor(s) mentioned in the foregoing notice of lien; that deponent has read the said notice and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me on

*1st March 2007*

STATE OF NEW JERSEY COUNTY OF BERGEN

CORPORATION

Robert L. Gerosa, Jr. being duly sworn, says that deponent is the ----- Vice President of ALF Rental Company, Inc. herein, that deponent has read the foregoing notice of lien and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes it to be true. The reason why this verification is made by deponent is that deponent is an officer, to wit, the Vice President of Alf Rental Co, Inc. which is a New Jersey corporation, and deponent is familiar with the facts and circumstances herein. The sources of deponent's information and the grounds of deponent's belief as to all matters not therein stated upon deponent's knowledge are as follows: personal knowledge and books and records

Sworn to before me on

*1st**March 2007**Bonnie P. Jackson*

OFFICIAL SEAL  
BONNIE P. JACKSON  
NOTARY PUBLIC-NEW JERSEY  
My Commission Expires Oct. 28, 2008

Editor's note: Notice of Mechanic's Lien may be filed at any time during progress of the work and the furnishing of the materials, or, within eight months (four months if a single family dwelling) after the completion of the contract, or the final performance of the work, or the final furnishing of the materials. The Notice of Mechanic's Lien must be filed in the Clerk's office of the county where the property is situated. If such property is situated in two or more counties, file the Notice of Mechanic's Lien in the office of the Clerk of each county. See Lien Law § 10.

# **EXHIBIT “B”**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ALF RENTAL COMPANY, INC.,

Plaintiff,

Docket No.: 07 CV 3148 (KMK)

-against-

**ANSWER AND  
DEMAND FOR JURY**

BUILDERS RESOURCE, INC., D'ONOFRIO GENERAL  
CONTRACTORS CORP., CONSOLIDATED EDISON  
OF NEW YORK, INC., TERRA DINAMICA, LLC,  
CORESLAB STRUCTURES, and NICOLSON  
CONSTRUCTION CO.,

Defendants.

-----X

DEFENDANT BUILDING RESOURCES, INC., by its attorneys, Lambert & Weiss, as  
for its answer to the complaint alleges as follows:

1. Denies having knowledge or information sufficient to form a belief as to the truth  
thereof of the allegations contained in paragraph "1" of the complaint.

2. Denies the allegations contained in paragraph "2" of the complaint, except admits  
that at certain times it did business within the State of New York.

3. Denies having knowledge or information sufficient to form a belief as to the truth  
thereof of the allegations contained in paragraph "3" of the complaint.

4. Denies having knowledge or information sufficient to form a belief as to the truth  
thereof of the allegations contained in paragraph "4" of the complaint.

5. Denies having knowledge or information sufficient to form a belief as to the truth  
thereof of the allegations contained in paragraph "5" of the complaint.

6. Denies having knowledge or information sufficient to form a belief as to the truth  
thereof of the allegations contained in paragraph "6" of the complaint, except alleges upon

information and belief that D'Onofrio was believed to be the general contractor for a certain project.

7. Denies the allegations contained in Paragraph "7" of the complaint.

**IN ANSWER TO THE FIRST CAUSE OF ACTION**

8. Denies the allegations contained in paragraph "8" of the complaint.
9. Denies the allegations contained in paragraph "9" of the complaint.
10. Denies the allegations contained in paragraph "10" of the complaint.
11. Denies the allegations contained in paragraph "11" of the complaint.
12. Denies the allegations contained in paragraph "12" of the complaint.
13. Denies the allegations contained in paragraph "13" of the complaint.
14. Denies the allegations contained in paragraph "14" of the complaint.
15. Denies the allegations contained in paragraph "15" of the complaint.
16. Denies the allegations contained in paragraph "16" of the complaint.
17. Denies the allegations contained in paragraph "17" of the complaint.

**IN ANSWER TO THE SECOND CAUSE OF ACTION**

18. In response to paragraph "18" of the complaint, this defendant repeats and realleges each and every allegation contained herein in response to paragraphs "1" through "17" of the complaint, as though fully set forth at length herein.

19. Denies the allegations contained in paragraph "19" of the complaint.
20. Denies the allegations contained in paragraph "20" of the complaint.
21. Denies the allegations contained in paragraph "21" of the complaint.

**IN ANSWER TO THE THIRD CAUSE OF ACTION**

22. In response to paragraph “22” of the complaint, defendant repeats and realleges each and every allegation contained herein in response to paragraphs “1” through “21” of the complaint, as though fully set forth at length herein.

23. Denies the allegations contained in paragraph “23” of the complaint.

24. Denies the allegations contained in paragraph “24” of the complaint.

**IN ANSWER TO THE FOURTH CAUSE OF ACTION**

25. In response to Paragraph “25” of the complaint, defendant repeats and realleges each and every allegation contained herein in response to paragraphs “1” through “24” of the complaint, as though fully set forth at length herein.

26. Denies having knowledge or information sufficient to form a belief as to the truth thereof of the allegations contained in paragraph “26” of the complaint.

27. Denies having knowledge or information sufficient to form a belief as to the truth thereof of the allegations contained in paragraph “27” of the complaint.

28. Denies having knowledge or information sufficient to form a belief as to the truth thereof of the allegations contained in paragraph “28” of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

29. The complaint fails to state a claim for which relief may be granted as against this defendant.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

30. Plaintiff has waived any and all claims asserted in its complaint and is estopped from asserting those claims.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

31. To the extent that any alleged loss occurred, such loss directly and proximately resulted from plaintiff's own independent mishandling of its own affairs and any purported damage caused to plaintiff is wholly unrelated to any purported acts, statements or alleged obligations of defendant.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

32. Plaintiff has failed to mitigate its damages.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

33. Plaintiff's claims are barred by release, payment and/or waiver.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

34. Plaintiff's claims, or portions thereof, are barred by plaintiff's failure to satisfy statutory and/or contractual conditions precedent and/or requirements.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

35. Upon information and belief, any monies due or owing to plaintiff, if any, are less than pleaded and/or improperly calculated.

36. By reason of the foregoing, defendant is not liable to plaintiff, or in the alternative, plaintiff's claim should be reduced and defendant is entitled to a set off.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

37. Plaintiff's claims, or portions thereof, are barred by the applicable statutes of limitations.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

38. Upon information and belief, plaintiff does not have a valid mechanic's lien under the laws of the State of New York.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

39. There was no privity between plaintiff and this defendant.

**DEMAND FOR JURY**

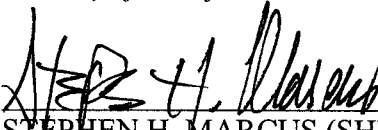
Defendant requests a jury for all counts that are triable before a jury.

**WHEREFORE**, defendant Building Resources, Inc. demands judgment dismissing plaintiff's complaint with costs, fees and disbursements.

Dated: New York, New York  
April 26, 2007

Yours, etc.

LAMBERT & WEISS  
*Attorneys for Defendant*

By:   
STEPHEN H. MARCUS (SHM 2370)  
61 Broadway, Suite 2020  
New York, New York 10006  
(212) 344-3100

To: BAHN, HERZFELD & MUTLER, LLP  
*Attorneys for Plaintiff*  
555 Fifth Avenue  
New York, New York 10017  
Attn: Richard L. Herzfeld

Thomas W. Moore, III  
TREACY SCHAFFEL MOORE & MUELLER  
*Attorneys for Defendant*  
*D'Onofrio General Contractors Corp.*  
111 Broadway, Suite 402  
New York, New York 10006

CONSOLIDATED EDISON COMPANY  
4 Irving Place  
New York, New York 10003

TERRA DINAMICA, LLC  
5 Meadow Brook Road  
Granby, Connecticut 06035

CORESLAB STRUCTURES, INC.  
1023 Waterbury Road  
Thomaston, Connecticut 06787

NICHOLSON CONSTRUCTION CO.  
12 McClane Street  
Cuddy, Pennsylvania 15031

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK       )  
  ) SS.:  
COUNTY OF NEW YORK    )

**STEPHANIE PAONESSA**, being duly sworn deposes and says: deponent is not a party to this action, is over 18 years of age, and resides in STATEN ISLAND, NEW YORK.

On the 26<sup>th</sup> day of April, 2007, I served a copy of the within:

**ANSWER AND DEMAND FOR JURY**

upon the following party(ies):

BAHN, HERZFELD & MUTLER, LLP  
*Attorneys for Plaintiff*  
555 Fifth Avenue  
New York, New York 10017  
Attn: Richard L. Herzfeld

Thomas W. Moore, III  
TREACY SCHAFFEL MOORE & MUELLER  
*Attorneys for Defendant*  
*D'Onofrio General Contractors Corp.*  
111 Broadway, Suite 402  
New York, New York 10006

CONSOLIDATED EDISON COMPANY  
4 Irving Place  
New York, New York 10003

TERRA DINAMICA, LLC  
5 Meadow Brook Road  
Granby, Connecticut 06035

CORESLAB STRUCTURES, INC.  
1023 Waterbury Road  
Thomaston, Connecticut 06787

NICHOLSON CONSTRUCTION CO.  
12 McClane Street  
Cuddy, Pennsylvania 15031

By causing to be delivered a copy of the same by first class mail in a postage paid properly addressed wrapper, in a depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
STEPHANIE PAONESSA

Sworn to before me this  
26<sup>th</sup> day of April, 2007

  
NOTARY PUBLIC

JEFFREY MAXWELL RUBINSTEIN  
Notary Public - State of New York  
No. 02RU6126802  
Qualified in New York County  
Commission Expires May 23, 2009